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# Security Council

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**Security Council Committee established pursuant to resolution 1540 (2004)**

## Note verbale dated 17 April 2018 from the Permanent Mission of Malaysia to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Malaysia to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1540 (2004) and has the honour to submit herewith Malaysia's national report on the implementation of Security Council resolutions 1977 (2011) and 2325 (2016) (see annex). This latest report contains an update on the relevant developments since the submission of Malaysia's first national report, dated 26 October 2004.

In this regard, the Permanent Mission requests the Committee to update the submission of Malaysia's national report and to make a copy of the latest report available on the website of the Committee.

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## Annex to the note verbale dated 17 April 2018 from the Permanent Mission of Malaysia to the United Nations addressed to the Chair of the Committee

## Report of Malaysia on the implementation of Security Council resolutions 1977 (2011) and 2325 (2016)

Malaysia submitted its report to the Security Council Committee established pursuant to resolution 1540 (2004) on 26 October 2004 (S/AC.44/2004/(02)/35). The present report is submitted pursuant to resolutions 1977 (2011) and 2325 (2016) and contains an update on the relevant developments since the submission of the first report.

### Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

In accordance with its obligations under the Convention, Malaysia enacted the Chemical Weapons Convention Act 2005, which led to the establishment of its National Authority for the Chemical Weapons Convention, thereby fulfilling its obligation under article VII of the Convention. Section 62 of the Act allows the Minister for Foreign Affairs to make regulations as may be necessary to provide full effect to the provisions of the Act. In this regard, the Chemical Weapons Convention Regulations 2007 were gazetted and entered into force on 1 November 2007. Together, both the Act and the Regulations serve as guidance for the Authority in ensuring the fulfilment of Malaysia's obligations under the Convention.

The National Authority comprises 14 relevant ministries and central agencies in carrying out its obligations and carries out the following tasks:

(a) Ensuring the effective implementation of the Chemical Weapons Convention Act;

(b) Facilitating inspections under the Convention;

(c) Cooperating with international inspectors in challenge inspections;

(d) Gathering the data to be reported in the annual declarations to the Organisation for the Prohibition of Chemical Weapons (OPCW);

(e) Providing OPCW and other States parties with relevant information in fulfilment of Malaysia's obligations under the Convention;

(f) Regulating and supervising issues or matters relating to the Convention, including the domestic implementation of the Convention;

(g) Issuing authorization in respect of activities relating to toxic chemicals listed in Schedule 1;

(h) Issuing directions to any national inspector for the purposes of enforcement and effective implementation of the Chemical Weapons Convention Act;

(i) Advising the Minister generally on issues or matters relating to the Convention;

(j) Levying any fees, as may be prescribed by the Minister, in respect of services rendered by the National Authority;

(k) Doing anything incidental or conducive to the performance of any of the functions.

Malaysia does not produce, stockpile, import, export or use any Schedule 1 toxic chemicals. Malaysia is fully committed to meeting its obligations under the Convention. This includes regulating the industry and monitoring the activities related to Schedule 1, 2, 3 and discrete organic chemicals. This is also part of States parties' obligations in undertaking every effort to ensure that the provisions of the Chemical Weapons Convention Act 2005 are enforced accordingly in order to meet the object and purpose of the Convention.

The National Authority also plays an active role in supporting programmes and workshops organized by OPCW and, in the same vein, supports all activities related to the peaceful uses of chemicals, capacity-building and assistance and protection initiatives under the Convention.

**Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction**

In line with article IV of the Convention, Malaysia is currently in the process of finalizing its Biological Weapons Convention bill as part of Malaysia's legislative framework to ensure the effective implementation of the Convention, and to complement existing laws, such as the Biosafety Act 2007. The envisaged Biological Weapons Convention act plays a multifaceted role, encompassing enforcement, oversight, education and awareness-raising. The bill, once gazetted into law, is expected to allow for effective enforcement of biosafety and biosecurity regulations, as well as to implement biorisk management in relevant facilities within the country.

**Comprehensive Nuclear-Test-Ban Treaty**

Malaysia signed the Treaty on 23 July 1998 and ratified it on 17 January 2008. Malaysia is currently in the process of finalizing its Comprehensive Nuclear-Test-Ban Treaty bill on the prohibition of nuclear weapon tests to highlight its strong commitment to the ratification of the Treaty. Although the Treaty has yet to enter into force, the bill will be tabled in Parliament and, once gazetted into law, is expected to allow for effective implementation of the Treaty and demonstrate Malaysia's commitment to the total elimination of nuclear weapons.

**International Court of Justice advisory opinion on the legality of the threat or use of nuclear weapons**

Following the rendering of the advisory opinion, Malaysia has tabled annually a draft resolution entitled "Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons" in the First Committee of the General Assembly. Malaysia has sought to remind the world at large that "there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control", as unanimously concluded by the Court. Malaysia believes that the disarmament of nuclear weapons will indirectly halt nuclear proliferation.

**Nuclear weapons convention**

In December 2007, Malaysia and Costa Rica proposed the Model Nuclear Weapons Convention, which was circulated as a document of the General Assembly (A/62/650). The proposed convention would prohibit all States from pursuing or participating in the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons.

**Humanitarian Initiative on the Impact of Nuclear Weapons**

Malaysia is part of the Humanitarian Initiative on the Impact of Nuclear Weapons, which seeks the banning of nuclear weapons based on humanitarian consequences. The movement, which was initiated during the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, has called upon the total elimination of nuclear weapons based on the catastrophic consequences of a nuclear detonation.

**Nuclear Security Summit**

Malaysia has been a member of the Summit since its inception in 2010 and has taken part in the four Summits, in 2010, 2012, 2014 and 2016. The broad goal of the Summit process is to address the threat of nuclear terrorism by minimizing and securing weapons-usable nuclear materials, enhancing international cooperation to prevent the illicit acquisition of nuclear material by non-State actors such as terrorist groups and smugglers, and taking steps to strengthen the global nuclear security system. Malaysia continues to work towards these goals, on the basis of the five action plans that have been approved for international organizations and initiatives to continue the work of the Summit.

**Proliferation Security Initiative**

On 27 April 2014, Malaysia announced its decision to join the Proliferation Security Initiative. Malaysia's decision to participate in the Initiative stemmed from the fact that Malaysia has carried out interdiction activities in fulfilling its obligations towards countering proliferation under resolutions 1540 (2004) and 1977 (2011).

The first paragraph of the Statement of Interdiction Principles for the Proliferation Security Initiative states that members are committed to "undertake effective measures, either alone or in concert with other States, for interdicting the transfer or transport of [weapons of mass destruction], their delivery systems, and related materials to and from States and non-State actors of proliferation concern. 'States or non-State actors of proliferation concern' generally refers to those countries or entities that the [Initiative's] participants involved establish should be subject to interdiction activities because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving or facilitating) of [weapons of mass destruction], their delivery systems or related materials".

Malaysia is therefore committed to upholding the Statement of Interdiction Principles, subject to the principles of sovereignty of States, territorial integrity and non-interference in internal affairs of States, any other applicable principles of international law and its domestic laws and policies. The Initiative adds value to Malaysia's existing arrangements and efforts to curb illicit trafficking of weapons of mass destruction. This is done through increased cooperation and the sharing of intelligence, information and technical expertise with other Initiative participants.

**Global Initiative to Combat Nuclear Terrorism**

Malaysia endorsed the Initiative on 21 March 2012. Malaysia abides by the Initiative's Statement of Principles, which states that members should develop, if necessary, and improve accounting, control and physical protection systems for nuclear and other radioactive materials and substances.

**Treaty on the Prohibition of Nuclear Weapons**

On 20 September 2017, Malaysia signed the Treaty, which seeks to prohibit the development, testing, production, stockpiling, stationing, transfer, use and threat of use of nuclear weapons. Malaysia is working towards ratifying the Treaty at the earliest opportunity.

**Other national laws and measures**

*Strategic Trade Act 2010*

Malaysia enacted the Strategic Trade Act 2010 in 2010 in response to resolution 1540 (2004), in which the Council called upon United Nations Member States to curb the proliferation of weapons of mass destruction to State and non-State actors. The Act was passed by the Parliament of Malaysia on 5 April 2010 and came into force on 1 January 2011.

The Act provides for control over the export, trans-shipment, transit and brokering of strategic items, including arms and related material, and other activities that will or may facilitate the design, development and production of weapons of mass destruction and their delivery systems. In order to give full effect to the provisions of the Act, the following four subsidiary pieces of legislation were enacted pursuant to the Act:

(a) Strategic Trade Regulations 2010, which prescribe forms, fees, procedures for application and issuance of permits and related matters and set forth conditions for non-requirement of permit (exemption) for transit and trans-shipment;

(b) Strategic Trade (Strategic Items) (Amendment) Order 2017, which came into force on 30 March 2017 and lists the controlled strategic items (goods, software and technology), consisting of dual-use items and military items. The list of strategic items reflects the items required to be controlled under the multilateral control regimes, namely the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Australia Group, in addition to the Chemical Weapons Convention. Malaysia is not a member of any of the regimes and adopts the military and dual-use items list from the European Union;

(c) Strategic Trade (Restricted End Users and Prohibited End Users) Order 2010, which provides the list of individuals and entities that are designated as prohibited end users to which all exports, trans-shipment and transit of strategic items or unlisted items are absolutely prohibited, along with restricted end users for which a special permit is required to export, trans-ship or transit strategic items or unlisted items. The Strategic Trade (Restricted End Users And Prohibited End Users) (Amendment) Order 2016, which amends the Strategic Trade (Restricted End Users and Prohibited End Users) Order 2010, constitutes a reference to the official website of the United Nations that contains the lists of designated individuals and entities established, maintained and updated pursuant to Security Council resolutions 1718 (2006) and 2231 (2015) on the Democratic People's Republic of Korea and the Islamic Republic of Iran, respectively;

(d) Strategic Trade (United Nations Security Council Resolutions) Regulations 2010, which implement the measures decided by the Security Council in pursuance of Article 41 of the Charter of the United Nations to give effect to its decisions on the non-proliferation of weapons of mass destruction, including the targeted financial sanctions related to proliferation against the designated individuals and entities listed in the Strategic Trade (Restricted End Users and Prohibited End Users) Order 2010.

The Strategic Trade Secretariat was established within the Ministry of International Trade and Industry on 15 July 2010 as the focal point to coordinate the implementation of the Strategic Trade Act. The Strategic Trade Secretariat is led by the Strategic Trade Controller and assisted by a Deputy Controller, both of whom are appointed by the Minister of International Trade and Industry. The Controller is empowered by the Act to appoint any public officers and other officers to assist in performing the Controller's functions under the Act.

The responsibilities for implementing the Act are shared by the Controller in the Strategic Trade Secretariat, the Ministry of International Trade and Industry and the relevant authorities, namely the Atomic Energy Licensing Board, the Malaysian Communications and Multimedia Commission and the Pharmaceutical Services Division of the Ministry of Health, which are designated under the domestic laws for the regulation of strategic items, unlisted items and restricted activity.

The Act provides for the inter-operation of the enforcement powers of the authorized officers under the Act and their existing powers under other laws. The enforcement of the Act is conducted by the officers of the Royal Malaysian Customs Department, the Royal Malaysia Police, the Malaysian Maritime Enforcement Agency, the Malaysian Communications and Multimedia Commission, the Atomic Energy Licensing Board, the Pharmaceutical Services Division, the central bank of Malaysia, Securities Commission Malaysia, the Labuan Financial Services Authority and such other officers as may be specified by the Controller.

The Act requires a person to obtain a permit to export, trans-ship or bring in transit the strategic items listed in the Strategic Trade (Strategic Items) Order 2017 from the relevant authority. An application for the permit must be accompanied by an end-use statement, technical specification of the item and other documents deemed necessary.

Specific offences prescribed under the Act include the export, trans-shipment or transit of strategic items without a permit; export, trans-shipment or transit of strategic items or unlisted items to a restricted end user without a special permit; export, trans-shipment or transit of strategic items or unlisted items to a prohibited end user; and brokering without registration.

For offences committed under the Act with the intent to unlawfully export, trans-ship or bring in transit strategic items which are arms or related material without a permit, or with knowledge that such transaction without a permit is unlawful, and where death is the result of the act, the most severe penalty prescribed under the Act is death or imprisonment for life. If such offence is committed by a body corporate, a maximum fine of RM 30 million shall be imposed.

After seven years of implementation, the Act underwent a good regulatory practice — regulatory impact analysis exercise, which involved the identification of problems and risk analysis, as well as consultations with public and government agencies, for its first amendment. The amendment was approved by Parliament in April 2017 and was gazetted on 21 June 2017. The Strategic Trade Act (Amendment) 2017 came into operation on 8 September 2017. The purpose of the Act's amendments was to adapt to the changing dynamics of proliferation scenarios, and at the same time ensure compliance with the relevant Security Council resolutions without discouraging trade activities. Key elements of the amendment are:

- Revising the quantum of sentences for offences and introduction of compoundable penalty under the Act
- Revising the definition of brokering
- Flexibility in submitting the end-use statement for permit applications

- Introduction of the presumption of export
- Appointment of additional authorized officers
- Introduction of a few new sections to strengthen the implementation of the Act

*Atomic energy bill*

Malaysia's current nuclear laws do not have the provision to enable the country to:

- Accede to the Convention on the Physical Protection of Nuclear Material and its 2005 Amendment
- Ratify the International Convention for the Suppression of Acts of Nuclear Terrorism
- Ratify the International Atomic Energy Agency (IAEA) Additional Protocol and adopt the outstanding IAEA Codes of Conduct

The relevant authorities are taking steps to have the atomic energy bill tabled in Parliament at the earliest opportunity in order to enable Malaysia to further strengthen its efforts in the international disarmament and non-proliferation field.

*Anti-Money Laundering and Anti-Terrorism Financing Act*

Malaysia has amended its Anti-Money Laundering and Anti-Terrorism Financing Act, which came into effect in September 2014. The Act is currently known as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001. The new amendments intend to reflect international standards and domestic requirements, enhance the investigative powers of the law enforcement agencies, and will result in greater clarity on reporting obligations, greater enforcement powers and higher penalties.

The Minister of Home Affairs of Malaysia, under sections 66C and 66D of the Act, introduced the Anti-Money Laundering and Anti-Terrorism Financing (Security Council Resolution) (Al-Qaida and Taliban) (Amendment) Order 2014, which came into operation on 10 September 2014. The Order was introduced with the purpose of giving effect to the assets-freezing measures imposed by the Security Council, by making direct reference to the consolidated lists available on the United Nations website for both resolutions 1267 (1999) and 1988 (2011) pertaining to Al-Qaida and the Taliban. This allows for the immediate (i.e. without delay) application of targeted financial sanctions measures against specified individual and entities.

The Minister of Home Affairs has also issued, under section 66B of the Act, a domestic listing in line with the requirements of resolution 1373 (2001) for targeted financial sanctions measures. The latest domestic listing, which is known as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Declaration of Specified Entities and Reporting Requirements) (Amendment) Order 2016, was issued on 5 September 2016. To date, there are 45 individuals and 20 entities listed under the Order.

*Security Offences (Special Measures) Act 2012*

Malaysia introduced the Security Offences (Special Measures) Act 2012 to replace the Internal Security Act. The Act was introduced under article 149 of the Malaysian Federal Constitution to handle internal security issues, including public order, acts of terrorism, sabotage and espionage. The Act contains adequate provisions to curb any militant activities in the country. For instance, any act of violence, as underlined in chapter VI A (on offences relating to terrorism) of the Penal Code, is tantamount to security offences under the First Schedule of the Act.

Pursuant to the tabling of the white paper on Islamic State threats in Parliament on 26 November 2014, three new pieces of legislation have been passed, while four existing ones have been amended. They are as follows:

(a) Prevention of Terrorism Act 2015;

(b) Special Measures against Terrorism in Foreign Countries Act 2015;

(c) National Security Council Act 2015;

(d) Prison (Amendment) (No. 2) Act;

(e) Penal Code (Amendment) Act;

(f) Prevention of Crime (Amendment) Act;

(g) Security Offences (Special Measures) (Amendment) Act.

*Nuclear security initiatives*

Malaysia is integrating nuclear security elements into the national security perspective. The planning and implementation stages are conducted by the National Security Council, which is the highest national security platform. All nuclear security elements are coordinated by the Atomic Energy Licensing Board on the basis of the IAEA Integrated Nuclear Security Support Plan, involving all identified relevant stakeholders.

**International and regional cooperation**

Malaysia plays an active and constructive role in disarmament and non-proliferation efforts at various regional and international forums. Malaysia co-hosted and/or co-chaired the seventh, eighth and ninth intersessional meetings on non-proliferation and disarmament of the Regional Forum of the Association of Southeast Asian Nations (ASEAN), in Kuala Lumpur (2015), Putrajaya, Malaysia (2016), and Auckland, New Zealand (2017), where issues of non-compliance with international non-proliferation obligations were discussed.

Malaysia has received support, assistance and cooperation from States and regional economic integration organizations, such as Australia, Japan, the United States and the European Union, in capacity-building and outreach programmes relating to the implementation of resolutions 1540 (2004) and 1977 (2011).

Malaysia has organized various commodity identification training programmes, both locally and with the cooperation of international bodies, aimed at familiarizing enforcement officers with and enhancing their ability to recognize strategic items under the Strategic Trade Act 2010.

Malaysia has participated in various programmes organized regionally and internationally, including those organized by IAEA, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, the European Union Chemical Biological Radiological and Nuclear Risk Mitigation Centres of Excellence Initiative, the Cooperative Biological Engagement Programme, the Global Threat Reduction Initiative and the ASEAN Network of Regulatory Bodies on Atomic Energy (ASEANTOM). In turn, Malaysia has hosted similar programmes with the cooperation of the same international and regional bodies.